



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 29 2009

Robert Rogers, Technical Manager
Pollution Control Section
Memphis-Shelby County Health Dept
814 Jefferson Avenue, Suite 437
Memphis, Tennessee 38105

Dear Mr. Rogers:

This correspondence is being sent to provide you with a final copy of the U. S. Environmental Protection Agency (EPA) Region 4 report, which was completed as a result of the EPA title V program evaluation conducted the week of June 30 – July 1, 2009, in Memphis, Tennessee (see Enclosure). The purpose of this program review was to evaluate the status and the ability of the Memphis and Shelby County Health Department Pollution Control Section (the Department) to carry out the duties and responsibilities required to effectively run the title V program, as well as find out how EPA can best assist the Department in meeting these commitments.

Overall, EPA believes that the quality of the permits produced by the Department is excellent and included all the components required under part 70. However, EPA believes the Department must demonstrate significant improvement to meet several of the requirements for implementation of the title V program. Individually, these areas of concern are small in nature but collectively could create significant issues in the near future. Specific areas that must be improved include:

- (1) A process needs to be developed which reduces and eventually eliminates the backlog of title V applications.
- (2) A plan to meet the regulatory deadlines for addressing all administrative and minor permit revisions must be developed and implemented in accordance with 40 CFR sections 70(d) and 70(e)(2);
- (3) A plan needs to be developed that ensures sufficiently trained staff and alleviates concerns about the Department's overall ability to meet and maintain the requirements of 40 CFR part 70.

Other suggested improvements that EPA has detailed in this report to provide an enhancement to the title V program include:

- (1) A formalized written training plan should be developed and implemented;
- (2) The filing system needs to be updated and an evaluation of the cost benefits of

upgrading your server and moving to an electronic storage format should be conducted.

Since our onsite evaluation we have had the opportunity to discuss and review our findings. I appreciate your commitment to working with us on the follow-up issues identified in this report. EPA is requesting a detailed response providing a plan of action to address these concerns to be submitted to EPA within 120 days from receipt of this letter or by February 1, 2010, whichever is later. EPA looks forward to continuing to work closely with the Department to improve the quality of the title V program. If you or your staff, have any questions regarding this report, please contact Randy Terry of the EPA Region 4 staff at (404) 562-9032.

Sincerely,

A handwritten signature in black ink, reading "Carol L. Kemker". The signature is fluid and cursive, with the first name "Carol" and last name "Kemker" clearly legible.

Carol L. Kemker
Acting Director
Air, Pesticides and Toxics
Management Division

Enclosure

Memphis and Shelby County Health Department Pollution Control Section Title V Program Review

The Memphis and Shelby County Health Department Pollution Control Section (the Department) initial program review was conducted on May 23 – May 25, 2006, in Memphis, Tennessee, and is kept on file at the Environmental Protection Agency (EPA) Region 4 office in Atlanta, Georgia. Based on the information gathered from the initial round of title V program evaluations and the implementation of new title V permit requirements, EPA committed to conduct a second round of title V program reviews, by the end of fiscal year 2010, for all state and local programs that had at least 20 title V major sources within their jurisdiction.

The second program evaluation of the Memphis and Shelby County Health Department Pollution Control Section title V program was conducted June 30 - July 1, 2009, in Memphis, Tennessee. Prior to EPA's arrival the Department was provided with a list of seven title V sources, including three with compliance assurance monitoring (CAM) plans that EPA planned to review as part of the program evaluation. An entrance interview between EPA and key staff of the Department was conducted, where EPA explained the details that Region 4 would be addressing during their office visit. The following parties attended the title V questionnaire discussion: Randy Terry (EPA Region 4), Sean Lakeman (EPA Region 4), Yolanda Adams (EPA Region 4), Bill Smith (the Department) and Gregg Fortunato (the Department).

Memphis and Shelby County Title V Program Review

1. Program Review

The Department's organizational structure for air permitting resides at the office in Memphis, Tennessee. All title V permits for the Memphis and Shelby County area are processed in the Memphis office. A separate program evaluation report will be written covering the Tennessee Department of Environment and Conservation (TDEC) title V program.

EPA's review of the Memphis and Shelby County title V program focused on programmatic knowledge/ implementation, resources (both human and funding), public participation and file review for designated facilities.

EPA appreciates the Department's efforts to aid the evaluation process by providing an answered copy of the program review questionnaire prior to the meeting. For many questionnaire items, the answers provided by the Department are more detailed than indicated in the summary discussion below. The answered questionnaire from the Department will be on file at EPA Region 4 for reference.

Programmatic knowledge/ Implementation

EPA and the Department held discussions on a variety of title V topics including resources, (staffing and capital), public participation, title V workload, compliance assurance monitoring (CAM) and initial and renewal title V permits. It was readily apparent during the discussions that the Department staff had a thorough understanding of the regulations and requirements of 40 CFR part 70. The Department staff was well versed in the history and procedures utilized by Memphis/Shelby County.

One example of the expertise of the Department staff was the content within the permit application evaluation (PAE). The summary page of the PAE was incredibly helpful in understanding the timeline of the public and EPA review process. The PAEs were very thorough and described pertinent applicability determinations, the rationale behind the monitoring, and detailed any exemptions allowed within the permit. In addition the overall title V permits are clear and practically enforceable.

Resources and Internal Management support

The Department establishes its title V fee based on emissions weight. Currently the Department's title V fees are projected to be \$30.00 per ton minus a 10 percent discount (\$27.00 per ton) for maintaining a 35 percent surplus of its projected budget for the upcoming year, pending approval by the County Commission. For the fee to become effective it must undergo three separate readings and votes before the County Commission. Currently the Department is awaiting the vote from the second County Commission reading. The Department expects the title V fee to pass with no changes. Additionally, the Department charges a title V permit fee of

\$1000 annually or upon issuance of a new title V permit and a minimum emissions fee of \$1000, which must be approved by the County Commission and by the other municipalities prior to implementation. Title V revenue are processed and tracked within an account exclusively designated for title V. This system allows for financial reports for management oversight and accurately accounts for title V revenue as well as expenditures.

The Department currently funds 11.40 title V full time equivalent (FTE) positions distributed over 19 positions. If fully staffed, the Department would have eight full time engineers (or permit writers). The Department lost two permit writers in 2006 and one permit writer in both 2008 and 2009, for a total of four permit writers lost since the previous evaluation. In addition, since 2007, the Department has consistently had four vacancies which means they have operated with only four permit writers on staff. The lack of staffing has impacted permit issuance numbers and other associated title V activities. In an effort to deal with the staffing shortage the Department has utilized their stack test engineer to assist in title V permit issuance when possible. With recent hires, the Department had six title V permit writers on staff at the time of the evaluation. However, the most recent permit writer hires did not have any prior air experience, which is a significant hindrance because of the manner in which the Department is organized (see below).

The Department is organized as a “one stop shop” in which the title V staff is responsible for title V and synthetic minor permits, compliance assistance, inspections, complaints, enforcement and other non-title V activities. These other non-title V actions consist of local ordinance complaints such as dust and odor, legal actions, responding to articles regarding environmental issues and other activities. In order to adequately track time spent on title V and non-title V activities, Department supervisors review each permit writer’s workload regularly and adjust their workload to remain within the previously discussed percentages. The Department’s permit writers generally have a workload of five title V permits per permit writer, although this number varies based on the complexity of the permit and the number of title V applications in-house at a given time.

Management is kept abreast of permit issuance with a tracking system that tracks all documents incoming and outgoing. Specifically each permit type is tracked and milestone dates for processing the actions are assigned within the tracking system. Additionally, monthly and quarterly reports are generated on the status of specific projects.

During conversations with Department management, lack of manpower was cited as a major factor in delaying title V permit issuance (see discussion of permit issuance). The manpower shortage was attributed to the Department having starting salaries for their engineers well below the industry average. Other issues cited were a limited ability to advance within the Department, and a loss of senior staff which has led to lost time working on permits due to training of new staff. Department turnover has created delays in permit issuance, less overall continuity, and a loss of experience and familiarity in dealing with title V sources. The hiring of new employees unfamiliar with Clean Air Act regulations has led to more time being spent on training and site visits in order to gain the knowledge necessary to process the title V actions. This has resulted in

a backlog of title V actions.

The Department spends a great deal of time on peer-to-peer training for new employees and when possible offers formal training courses. However, the Department's travel and training budget has been significantly restricted by county policy, making it difficult to attend training away from the Memphis area. In an effort to combat this restriction, the Department has requested EPA to consider providing more training in Memphis or nearby.

Permit Issuance

At the time of the initial program evaluation in May of 2006, the Department had four outstanding initial title V applications to be permitted. Since that time, the Department has issued three of those permits and has one initial title V application remaining. The final permit is expected to be issued once the Global Settlement for refineries is reached.

From July 2008 to June 2009, the Department completed a total of two title V renewals. The lack of applications processed has led to the Department having a total of 15 permit applications in house waiting to be permitted and has created a backlog of eight title V permit applications older than 18 months including some permits that expired as far back as 2003. However, each of the applications were reviewed and determined to be submitted timely and complete, which has allowed the sources to maintain their application shield until their new permit is issued. While the sources remain covered by their application shield and can operate under their existing permit, this is not a replacement for the issuance of a current title V permit. In addition, the Department expects to receive three more title V renewal applications within the next eight months. The Department must make these renewal permits a priority and establish a process by which they begin to reduce this backlog.

The staffing shortages have resulted in delays of processing minor modifications to title V permits in accordance with requirements in 40 CFR sections 70(d) and 70(e)(2). Local regulations make it a Department priority to process requests for construction permits before any other activity. This has led to a large number of construction permits awaiting incorporation into title V permits.

File Review and CAM Plans

As a part of the evaluation, EPA reviewed the files of seven title V sources for administrative content. The purpose of this review was to determine the completeness of the file record and to evaluate the ease of access in finding the necessary documents within the file. The files evaluated during the review were generally complete. In each instance that information was absent from the files, the permit writer was able to retrieve the information from elsewhere. One concern noted was the lack of organization of the permitted source files. Over the years, the title V files have become extremely voluminous and are stretching the capacity of the available space allotted by the Department for maintaining the files in hardcopy format. The Department, to their credit, has tried to retain part of the files in an electronic format, but have been hampered by

inadequate server space and the lack of a high quality scanner. The ability to maintain files in an organized manner readily available for public review is a central focus of the public participation requirement of 40 CFR part 70. EPA strongly encourages the Department to reevaluate this situation and consider moving to an electronic format for permit storage.

As a result of the Compliance Assurance Monitoring (CAM) plans not being required at the time of the initial program evaluation of the Memphis/Shelby County Health Department, EPA focused a portion of this evaluation on ensuring that the Department was well trained, had good understanding and was ensuring that the sources were submitting CAM plans in accordance with the requirements of 40 CFR part 64. The Department has primarily relied upon EPA for guidance in reviewing and developing CAM plans. As a part of this program evaluation, EPA conducted a detailed review of CAM plans from three title V permit applications. Each of these CAM plans was clear and met the requirements of 40 CFR part 64. EPA is comfortable the Department has a good overall understanding of these requirements and has done a good job in conveying these requirements to the source. While the Department has a good understanding of CAM, they have indicated a desire for EPA specific training in this area.

Areas for Improvement

EPA noted during the evaluation that the Department has not formalized its practices for training new employees. While the Department is fairly consistent in the methods used to train the new employees, these methods are not sustainable for long term success. EPA strongly recommends that the Department finalize a written training plan to ensure future continuity of training and operation. EPA is aware of the Department Standard Operating Procedures for permitting and agrees that this is a good framework and should be expanded to cover new and existing employee training as well as office protocol as soon as possible.

The Department has completed two title V renewals in the past year. This along with other priorities and staff shortages has led to a backlog of eight title V renewal permits and a total of 15 renewal permits in house waiting to be permitted. In addition, the Department expects to receive three more title V renewal applications within the next eight months. The Department should make these renewal permits a priority and establish a process by which they begin to reduce this backlog.

EPA noted that the Department does not process administrative and minor modifications during the required regulatory timeframe. While EPA understands that the Department has many priorities, 40 CFR part 70 is very clear in establishing regulatory timeframes for processing these modifications, and every effort should be put forth to meet these timeframes. The Department needs to revise its approach in addressing these modifications in accordance with 40 CFR sections 70(d) and 70(e)(2).

With the steady turnover within the title V section, as well as the title V permitting requirements not being approved within required timeframes, EPA has concerns about the Department's overall ability to meet and maintain the requirements of 40 CFR part 70.

Individually, these areas of concern are small in nature but collectively, could create significant issues in the near future. The lack of a formalized training program along with a steadily revolving staff makes it hard for the Department to fully gain traction on a steadily growing backlog. Combined with limited file storage space and inadequate server space, it is apparent that the Department staff is working with limited options. EPA is aware of the Department's title V surplus of funds and believes some of those funds could be utilized to make the work environment more successful. In support of this use of funds, EPA points to 40 CFR part 70 which requires the Department to sufficiently fund the title V program to meet the requirements of part 70.

Conclusion

At the conclusion of the onsite portion of the Title V program review, Region 4 personnel met with Department officials to conduct an exit interview. During this exit interview Region 4 shared the findings of the review and laid out the next steps for completion of the final report. Personnel in attendance from EPA Region 4 were Randy Terry, Sean Lakeman and Yolanda Adams. Department officials in attendance included Bill Smith, Bob Rogers, and Gregg Fortunato. Tyler Zerwekh, Deputy Administrator of the Bureau of Environmental Health was also in attendance.

In summary, EPA believes that the quality of the permits produced by the Department is excellent and included all the components required under part 70. However, resourcing issues such as insufficient staff and an inability to use their surplus title V revenue have led to a failure to complete work products within the federal timeframes established in 40 CFR part 70. EPA believes that the Department must address several areas to meet the federal requirements established for operating a title V program and looks forward to working with the Department in the future.